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Arizona Corporation Commission

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AZ CORP COMMISSION
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Attorney for Energy Freedom Coalition of America

BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONER

TOM FORESE
COMMISSIONER

DOUG LITTLE
COMMISSIONER

IN THE MATTER OF THE)	DOCKET NO. E-01933A-15-0239
APPLICATION OF TUCSON)	
ELECTRIC POWER COMPANY)	
FOR APPROVAL OF ITS 2016)	THE ENERGY FREEDOM COALITION
RENEWABLE ENERGY)	OF AMERICA'S REPLY IN SUPPORT
STANDARD AND TARIFF)	OF ITS MOTION FOR PROCEDURAL
IMPLEMENTATION PLAN.)	CONFERENCE

I. TEP Again Is Attempting To Avoid Scrutiny Of Its UODG Program

In its Application in this Docket and its Response and Supplemental Response, Tucson Electric Power ("TEP") argues that this Commission should permit TEP to turn a limited *pilot* program for utility-owned distributed solar (the "UODG Program") into a new *ongoing* business with a \$25 million operating budget, without taking or considering a single piece of evidence on numerous issues including the competitive implications of this initiative or its compliance with state policy, and without the benefit of testimony and cross examination in an evidentiary hearing on these issues. TEP believes it should be permitted to more than double the size and scope of its UODG Program, permitting the monopoly utility to expand its foray into a private, competitive service through its regulated monopoly, without an evidentiary hearing of any kind to determine the extent to which this expansion poses a dire threat to a competitive industry.

1 TEP's request for monopoly treatment of an expanded rooftop DG offering is particularly
2 egregious because earlier this year, the Legislature confirmed (Chap. 90, Laws 2015, effective
3 January 1, 2016) that the provision of distributed generation systems is a competitive industry,
4 with unregulated prices, but in need of the consumer protections and disclosures that the legislation
5 provides. Moreover, TEP's request is simply one element of TEP's ongoing assault on
6 competition from distributed solar through its efforts to eviscerate net metering, impose charges
7 or restrictions on residential distributed generation customers not imposed on other customers—
8 and threatening prospective DG customers with imposition of those changes to customers filing
9 interconnection requests after June 1, 2015.

10 In sum TEP is attempting to exploit the REST Implementation Plan process to avoid the
11 scrutiny of the competitive implications of its UODG expansion that must be undertaken through
12 an evidentiary hearing. The Energy Freedom Coalition of America ("EFCA") respectfully
13 reiterates its view that it is long past time for an evidentiary hearing to determine the threat TEP's
14 proposals pose to competition, threats that prevent inclusion of utility-owned rooftop DG within
15 TEP's monopoly network.

16 **II. EFCA's Motion Is Timely**

17 Despite TEP's protestations, EFCA's Motion is timely by all legal measures. The
18 Commission's Rules provide no prohibition on filing a Motion for Procedural Conference at any
19 time and, as TEP itself points out, no Procedural Order has been issued in the Docket setting a
20 cutoff date for such filings. EFCA understands that TEP does not want its UODG Program subject
21 to scrutiny in an evidentiary hearing, but that does not make EFCA's Motion untimely. In fact,
22 Rule 14-3-204(A) indicates that parties are free to request intervention up until just ten (10) days
23 prior to a hearing on the item, and certainly those intervening sooner are entitled to request a
24 procedural conference as permitted by the Rules.

25 **III. An Evidentiary Hearing Will Not Prejudice TEP or Its Ratepayers**

26 EFCA believes that certain elements of the TEP REST Plan Application could be approved
27 without an evidentiary hearing. However, the expansion of the UODG Program and the proposal
28 to provide utility-owned "community" solar as "distributed generation" under the Commission's

Rules—while remaining a monopoly service closed to third parties—must be subject to an evidentiary hearing to determine, amongst other things, its threat to a competitive industry. The expansion of the UODG Program and the new treatment of utility-owned community solar are both new to TEP. As a result, there is no reasonable basis for an expectation by TEP or its ratepayers that these programs would be in place by a certain time, if at all. Thus, TEP cannot credibly claim that taking the time necessary to subject its proposal to a full investigation of its competitive implications and defiance of the Arizona’s legislature’s recent enactment of legislation recognizing competition in DG solar, will prejudice TEP or its ratepayers. To the contrary, TEP ratepayers’ interests are better served by having a full evidentiary hearing on the UODG Program and the proposed new treatment of “distributed generation” community solar than they would be by simply fast tracking approval of an expensive program.

IV. It Is Bad Precedent To Permit Utilities To Utilize Their REST Implementation Plans To Avoid Scrutiny Of Expansive Programs.

TEP should not be permitted to avoid a full investigation of its UODG and DG Residential Community Solar Programs merely because it includes them in its REST Implementation Plan filing. TEP is the one that chose to try to use its REST Implementation application as a vehicle to implement a massive new expansion of its monopoly business into a competitive industry. It would be bad precedent to adopt TEP’s position and to signal to utilities that they can be assured of a lesser level of scrutiny if they propose anti-competitive programs within their REST Implementation Plan filings.

V. Commission Precedent Supports Getting This Right

In the past, REST Implementation Plans have been fully or partially approved in the year after they were filed.¹ This means that there is plenty of time to hold the Procedural Conference and set a schedule for a hearing on the contested matters while figuring out which portions of the TEP REST Implementation Plan can move forward without the evidentiary hearing. This Procedural Conference could be held in mid-December, and the uncontested portions of the TEP REST Implementation Plan could be set for the January Open Meeting. This is a pretty simple

¹ See eg, Decision 72736, January 13, 2012; See also, Decision 74237, January 7, 2014; Decision 74949, February 9, 2015; Decision 72737, January 18, 2012.

1 process in light of the fact that the Commission often approves REST Plans in the year after they
2 were filed.

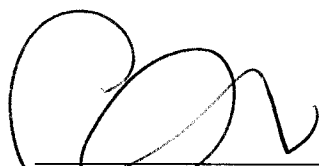
3 **VI. TEP's Response And Supplemental Response Are Contradictory**

4 In its Response, TEP argues that EFCA's Motion is filed too late to warrant consideration²
5 while it contradictorily argues in its Supplemental Response that EFCA should have waited to
6 bring its request for a hearing by including the request in its comments and Exceptions filed only
7 in response to the Staff Report.³ TEP is arguing that EFCA filed its Motion too late but that the
8 proper process is for EFCA to file its request even *later*. This neatly illustrates the extent to which
9 TEP wants to avoid an evidentiary hearing on the competitive implications of its treatment of
10 utility-owned distributed generation community solar and the expansion of its UODG Program.
11 In an effort to stymie a true investigation, TEP is willing to argue that EFCA's Motion was both
12 too late and too early. The Commission should reject these self-serving contortions and permit the
13 parties to move forward with a proper hearing.

14 **VII. Conclusion**

15 EFCA's Motion is timely and an evidentiary hearing is warranted in this proceeding. In
16 light of the numerous material facts at issue in this matter, EFCA respectfully requests that the
17 Commission issue a procedural order convening a procedural conference for the purposes of
18 setting a schedule for an evidentiary hearing in this matter.

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20 Respectfully submitted this 1st day of December, 2015.

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24 Court S. Rich
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28 ² See, Response at 4:21-23.

³ See, Supplemental Response at 1:20-24.

1 **Original and 13 copies filed on**
2 **this 1st day of December, 2015 with:**

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